THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0771, Maureen Soraghan v. Mt. Cranmore Ski Resort, Inc. & a., the court on October 4, 2007, issued the following order:

The parties appeal and cross-appeal several pretrial rulings of the superior court in this action seeking compensation for injuries the plaintiff allegedly sustained as a result of a fall on the defendant's property. The plaintiff argues, inter alia, that the trial court erred by requiring that she establish causation through expert testimony, and by ruling that the testimony of her disclosed expert was not sufficient to carry this burden. Finding no error, we affirm.

"[W]here scientific issues are beyond the capacity of people of common experience and knowledge to form a valid judgment by themselves, expert evidence is required to assist a jury in its decision." Reed v. County of Hillsborough, 148 N.H. 590, 591 (2002). Expert medical testimony may be required to prove causation of a plaintiff's physical injuries, unless "the cause and effect [of the injuries] are so immediate, direct and natural to common experience as to obviate any need for an expert medical opinion." Id. (quotation omitted). Where expert proof is required to establish causation of a plaintiff's physical injuries, the plaintiff need only show with reasonable probability that but for the defendant's breach of a duty of care, the harm would not have occurred. See Bronson v. The Hitchcock Clinic, 140 N.H. 798, 802-03 (1996). The decision to admit or exclude expert testimony is within the trial court's sound discretion. See id. at 806.

The plaintiff fell through a snow-covered crevasse at a skiing event on the defendant's property. The record indicates that the plaintiff, who had a history of knee problems, did not seek medical attention related to the fall for a fifteen-week period, and engaged in activities such as skiing and tennis during that time frame. She alleged that as a result of the fall, she suffered: (1) a complete tear of the right anterior cruciate ligament (ACL); (2) a complex tear of one half of the right medial meniscus; (3) a grade I and grade II chondral change of the medial femoral condyle adjacent to the meniscal tear; (4) a right knee small free edge lateral meniscal tear; (5) a right knee flexion contracture, post-ACL reconstruction; and (6) multiple surgical repairs of the right knee.

Prior to trial, the parties took the trial testimony of the plaintiff's treating physician by deposition. When asked whether the plaintiff's medical treatment was reasonably related to the fall, he testified, "I did not discuss [with the plaintiff] . . . any detail . . . how she injured that ACL in the first place[,] . . . but

when my patients tell me how they injured their knee, I have no choice but to believe them." When further asked whether he had an opinion as to whether the ACL tear was a result of the fall, he responded, "If [the plaintiff] says that her knee changed from the base line that it was before that fall, . . . I suspect that that ACL was torn during that fall, but I should note . . . this was not a perfectly normal knee before the fall. . . . [B]ut obviously that fall itself could be the cause . . . ." Finally, when the plaintiff's counsel followed up that response by asking whether he thought it to be "more likely than not that the fall caused the ACL tear," he responded, "I think it's more likely that something caused the ACL tear, and it seems to be that this is what [the plaintiff] points as the cause of her change in her knee status, was this fall . . . ." He then clarified that such a fall "can be a mechanism for tearing your cruciate ligament."

The defendant filed a motion in limine, seeking to preclude the expert's testimony in part upon the basis that it was insufficient, as a matter of law, to establish causation. The trial court granted the motion, finding that the plaintiff was required to establish causation through expert proof, and that the physician's testimony was insufficient to carry her burden upon that issue. The trial court then dismissed the case upon the parties' representation that, in light of the order, the plaintiff had no claim that she could prove.

Upon this record, the trial court did not err by concluding that expert testimony was required to prove causation. Each of the injuries for which the plaintiff sought compensation concerned the internal components of a knee that was known to have a history of medical problems. Although the plaintiff alleges that she suffered pain and swelling to the knee immediately following the fall, she did not seek medical attention for a period of fifteen weeks, and continued to engage in athletic activity upon the knee. Under these circumstances, we conclude that the cause and effect of the plaintiff's injuries were not so immediate, direct, and natural to common experience as to allow for proof by lay testimony. See Reed, 148 N.H. at 591.

Nor did the trial court unsustainably exercise its discretion by precluding the expert's testimony. Although there are no specific words or phrases an expert must articulate to establish causation, the testimony must be sufficient for a reasonable jury to conclude that, but for the defendant's negligence, the injuries probably would not have occurred. See Bronson, 140 N.H. at 804. Here, the expert opined simply that he suspected the ACL was torn during the fall because the plaintiff identified the fall as the cause, and that the fall could in fact have been the cause. Viewing this testimony in the light most favorable to the plaintiff, a reasonable juror could not have concluded that the injuries probably would not have occurred but for the fall. Inasmuch as the testimony was insufficient to survive a directed verdict on causation, we conclude that the trial court did not err by precluding it.

Because the plaintiff could not prove causation of the injuries for which she sought compensation, the trial court properly dismissed the action. Accordingly, we need not address the plaintiff's remaining arguments, or the defendant's cross-appeal.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

Eileen Fox,
Clerk